IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 118 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

YAKUBBHAI AKBARBHAI QURESHI

Appearance:

Ms.Sheth, Assistant GOVERNMENT PLEADER,
for the Petitioner.

MR DJ BHATT for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 07/07/2003

ORAL JUDGEMENT

Rule returnable today. Mr.Bhatt, learned Advocate, waives service of rule on behalf of the respondent.

With the consent of the parties, the matter is taken up for hearing today.

By filing this petition, the State has challenged the order passed by the Labour Court, Kalol, dated 1.5.2001, by which the Labour Court has passed an order of reinstatement in favour of the respondent-workman with back wages.

Ms.Sheth, learned AGP, has submitted that the order of the Labour Court is ex parte, as, unfortunately, by oversight, the Department could not remain present. It is not in dispute that the petitioner had shown negligence in not appearing before the Labour Court at the relevant time. However, Mr.Bhatt, learned Advocate for the respondent-workman, states that if appropriate cost is awarded to the respondent, he has no objection if the State is permitted to defend the matter before the Labour Court. He submitted that the State has shown total negligence and has not cared even to file reply before the Labour Court nor has the State led any evidence, even though sufficient opportunity was given by the Labour Court to the State. Prima facie, it seems that there is total negligence on the part of the State Government and the concerned Officer, who was in charge of the matter, was absolutely negligent in not defending the said Reference. Since Mr.Bhatt has submitted that on awarding reasonable costs, he has no objection if the Award is set aside, and considering the facts and circumstances of the case, and in order to give one last chance, the matter is sent back to the Labour Court for fresh adjudication after hearing both the sides. It is, however, clarified that in case the State still continues its negligent attitude, the Labour Court is free to decide the matter in absence of the State Government or its Officers, and Ms.Sheth, learned AGP, submitted that, thereafter, the State will not take such submission before this Court that opportunity may be given to the State Government to adduce evidence.

Considering the fact that the respondent-workman, without there being any fault on his part, is required to go to the Labour Court for proceeding with the said Reference, the State is directed to pay costs of Rs.10,000/- to the concerned workman. Such costs to be paid on or before 4th August, 2003. Costs to be deposited before the concerned Labour Court by the stipulated time and on depositing the same, the respondent-workman will be entitled to withdraw the same unconditionally. The costs of Rs.10,000/- is to be treated as costs in connection with the present Special

Civil Applicaiton only.

On the aforesaid condition, the order of the Labour Court is set aside. The matter is sent back to the Labour Court for deciding the reference, being Reference (LCK) No.117 of 1998, on its own merits. Before taking the said Reference for adjudication, the Labour Court shall enquire with the State whether the deposit is made by the State Government or not. In case such deposit is not made, it will not be obligatory on the part of the Labour Court to proceed with the Reference. Rs.10,000/- to be deposited as a condition precedent for setting aside the Award. If the costs, as indicated above, is deposited, the Labour Court shall proceed with the reference and shall decide the same afresh and dispose of the same finally on or before 31st December, 2003.

Rule is accordingly made absolute, with costs, as stated above.

7th July, 2003 (P.B. Majmudar, J.)

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(apj)